Supreme Court, U.S.
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No. 09-373

In The Supreme Court of the United States

SHAWN HALLINAN and WAYNE HAREJ,

Petitioners,

v.

FRATERNAL ORDER OF POLICE CHICAGO LODGE 7 and FRATERNAL ORDER OF POLICE ILLINOIS STATE LODGE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

JOEL A. D'ALBA
Counsel of Record
MARGARET A. ANGELUCCI
MICHELE COTRUPE
ASHER, GITTLER, GREENFIELD & D'ALBA, LTD.
200 W. Jackson Blvd., Suite 1900
Chicago, Illinois 60606
Telephone: (312) 263-1500

Attorneys for Respondents

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COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Respondents would restate the questions differently, as set forth below:

1. Does a union representing public sector employees pursuant to state statute act under color of state law when it expels individuals from membership pursuant to the provisions of the union's constitution and by-laws?

2. Whether public sector employees required by a collective bargaining agreement to pay "fair share" representational fees to a union, and required by state law to bargain with the employer over wages, hours and conditions of employment through the union, necessarily have the right under the Constitution to be members of that union if they obey its reasonable rules and regulations.

3. Whether public sector employees can assert a claim for violations of their First and Fourteenth Amendment rights against a union in the absence of a remedy under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.* (LMRDA).

CORPORATE DISCLOSURE STATEMENT

The Respondents are non-profit fraternal associations pursuant to Section 501(c)(8) of the Internal Revenue Code, 26 U.S.C. § 501(c)(8), and they are affiliated with the National Lodge of the Fraternal Order of Police.

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CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE

There are five additional statutory provisions, not listed by the Petitioners, that are relevant to this Court's decision.

Illinois Public Labor Relations Act, 5 ILCS 315/10(b)(1)

It shall be an unfair labor practice for a labor organization or its agents:

(1) to restrain or coerce public employees in the exercise of rights guaranteed in this act, provided,

(i) that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein or the determination of fair share payments and

(ii) that a labor organization or its agents shall commit an unfair labor practice under this paragraph in duty of fair representation cases only by intentional misconduct in representing employees under this Act;. . . .

Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 402(e)

"Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce,

an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 402(i)

"Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(5)

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

STATEMENT OF THE CASE

This case principally involves the question of whether a private labor organization's actions, in expelling members from the organization, constitute state action such that First and Fourteenth Amendment

rights must be guaranteed in the expulsion. Respondents concur with the Petitioners' statement of the factual and procedural history of this case to the extent that its statement of facts merely reflects allegations made in the complaint and to the extent that the explanation of the procedural history of the case is factual as opposed to argumentative. Respondents dispute many of the allegations made in the complaint below, but given that this case was ruled upon on a motion to dismiss, Respondents accept that all facts alleged in the complaint are deemed true for the purposes of resolution of this case.[1]

Despite their statements to the contrary, the Petitioners are contending that there is a constitutional right to become members, as opposed to fair share fee payers, of the labor organization that represents them for collective bargaining purposes. It is their belief that, since, as public employees, their union is excluded from the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA) concerning the due process rights of members, this Court is required to create for them such a federal right through the First and Fourteenth Amendments. They seek this, despite the fact that their union is a purely private entity, which, when disciplining or

[1] In its petition, the Petitioners state that officers on the board of Respondent Fraternal Order of Police Illinois State Lodge had campaigned against the Petitioners. Pet. 6. That allegation was not plead in the complaint.

expelling members, acts solely pursuant to its own internal constitution and by-laws.

In deciding to expel the Petitioners, the Respondents are not state actors, and thus cannot be guilty of such constitutional violations. The Petitioners do not, in this case, challenge the Respondents' receipt of fair share fees, taken pursuant to state law, or the State of Illinois' recognition of Lodge 7 as the Petitioners' exclusive collective bargaining representative. They instead contest only the Respondents' expulsion of them from membership in the union, a matter that is not governed by federal or state statutes. As the Court of Appeals aptly reasoned:

> To sum up, the plaintiffs are certainly correct that when a government employer forces its employees to join a union it is imposing on associational rights. The plaintiffs argue that this is the mirror image of such a forced association case – "a reverse fair-share case" as they put it. But the reverse case of an *employer forcing* an employee to join a union is the case where the *employer prohibits* its employees from associating with a union. Clearly this too would constitute a violation of First Amendment associational rights, but it is not what happened here. Here, it was the Union, rather than the employer, that barred the plaintiffs from membership. And union actions taken pursuant to the organization's own internal governing rules and regulations are not state actions. [Citations omitted.] [Emphasis in original.] Pet. App. 10-11.

In its reliance on Illinois' regulation of collective bargaining between public sector employers and unions in the Illinois Public Labor Relations Act (IPLRA), the Petitioners seek to make every action of such unions "state actions." But to do so here, where the IPLRA does not govern unions' rights to discipline or expel members, and, indeed, expressly excludes from its jurisdiction internal union matters, would turn conventional constitutional law on its head. If unions are to be state actors in their internal affairs simply by virtue of the fact that they are certified or recognized as exclusive employee representatives, then every private entity that is touched by state or federal law – including every corporate entity in this country – must be deemed state actors in every act that they undertake. Neither the Constitution nor the courts require such a conclusion in other circumstances and, as such, should not make a private entity a state actor in this case.

REASONS FOR DENYING THE WRIT

A. The IPLRA's Regulation of Collective Bargaining with Public Employers Does Not Imbue Public Sector Unions with State Authority in Matters of Internal Union Governance

1. Expulsion from the Union Is a Private Matter

The Court of Appeals properly held that the Petitioners' claims should be dismissed for failure to plead state action, which is a fundamental requirement for jurisdiction under 42 U.S.C. § 1983. The law of that circuit is clear that, in general, unions are not state actors. *Wegscheid v. Local Union 2911*, 117 F.3d 986, 988 (7th Cir. 1997). Thus, their internal governing rules and internal constitutions are not subject to First Amendment prohibitions. *Messman v. Helmke*, 133 F.3d 1042, 1044-45 (7th Cir. 1997); *see also*, *United States v. International Brotherhood of Teamsters*, 941 F.2d 1292, 1296 (2nd Cir. 1991), *cert. denied*, 502 U.S. 1091 (1992) (holding that actions taken pursuant to a union's constitution were private actions not subject to § 1983).

Petitioners fail to explain how state action exists in the Respondents' decision to expel them from Lodge 7, instead relying upon an inference that because the State of Illinois has legislated in the area of collective bargaining generally, and because Lodge 7 has developed a collective bargaining relationship with the City of Chicago specifically, then every

action of the Respondent unions must constitute action on behalf of the state and/or City. In this respect, the instant case is analogous to a number of cases decided by the courts where a state actor was merely peripherally involved in an otherwise purely private action. In such situations, one cannot make the logical leap that regulation of one aspect of an entity's actions make that entity a state actor.

One such case is *Driscoll v. International Union of Operating Engineers, Local 139*, 484 F.2d 682 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). There, the Court of Appeals for the Seventh Circuit reasoned that, to be regulated under Section 1983 and its related constitutional provisions, the very activity of a private entity which a plaintiff challenges must be supported by state action. *Id.* at 690. In that case, the plaintiff had instituted an action against the defendant union which alleged that the union's practice of requiring all candidates for union office to execute a non-Communist affidavit and the union's refusal to place him on the slate for executive office violated his First and Fifth Amendment rights. *Id.* at 689-90. In dismissing the claims for lack of state action, the court held that governmental regulation or participation in some of the affairs of unions does not make every union activity subject to constitutional restraints. *Id.* at 690. Rather, to be subject to constitutional standards, " . . . the very activity of a private entity which the plaintiff challenges must be supported by state action that significantly fosters or encourages that activity." *Id.* The plaintiff's claim

ultimately failed because he was unable to demonstrate that any governmental activity "significantly encouraged" the union in its promulgation and enforcement of the anti-Communist oath. *Id.* at 690-91.

Several years later, this Court decided *Blum v. Yaretsky*, 457 U.S. 991 (1982), in which the issue was whether Medicaid recipients were able to establish state action in nursing homes' decisions to transfer them to a lower level of care. There, the private nursing homes independently decided that the plaintiffs did not need the care that they were receiving from the homes and that they could be transferred to a lower level of care. *Blum*, 457 U.S. at 995. The homes then notified the city officials, who were responsible for administering the Medicaid program for the city, of the decision to transfer the patients. *Id.* After receiving the information, the city prepared to reduce or terminate payments to the nursing home for the plaintiffs' care and, following an administrative hearing, social service officials affirmed the decision to discontinue benefits unless the plaintiffs transferred to a facility with a reduced level of care. *Id.* This Court found that there was no state action to support the plaintiffs' Fourteenth Amendment claims, reasoning that the action being challenged (i.e., the transfer to a lower level of care) was undertaken by the nursing homes, which were clearly private entities. *Id.* at 1005. The Court concluded:

> Respondents, however, do not challenge the adjustment of benefits, but the discharge or

> transfer of patients to lower levels of care without adequate notice or hearings. That the State responds to such actions by adjusting benefits does not render it *responsible* for those actions. The decisions about which the respondents complain are made by physicians and nursing home administrators, all of whom are concededly private parties. There is no suggestion that those decisions were influenced to any degree by the State's obligation to adjust benefits in conformity with changes in the cost of medically necessary care.

Id. [Emphasis in original.] *See also, Broderick v. Associated Hospital Service*, 536 F.2d 1 (3rd Cir. 1976) (holding that state regulation requiring approval by state agency of health care contracts and subscriber rates was insufficient to confer state action on determinations made by private insurance companies).

Other cases followed the reasoning in *Blum v. Yaretsky*, one of which concerned the internal affairs of unions and possessed a strikingly similar fact pattern to that posed here. In *United States v. International Brotherhood of Teamsters*, 941 F.2d 1292, 1296 (2nd Cir. 1991), the plaintiffs were expelled from membership in the Teamsters' union and otherwise sanctioned by an Independent Administrator (IA), a position created by a consent decree issued by the U.S. courts. The Plaintiffs alleged that the creation of the IA in and of itself was sufficient to demonstrate state action. This argument was rejected by the court, as follows:

> Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes 'state action.' *See, e.g., Blum v. Yaretsky*, 457 U.S. 991, 1002, 73 L.Ed.2d 534 (1982). To qualify as state action, the conduct in question 'must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,' and 'the party charged with the [conduct] must be a person who may fairly be said to be a state actor.' *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 73 L.Ed.2d 482 (1982). The IA's imposition of sanctions on [the Plaintiffs] meets neither of these criteria.

Id. at 1295-96. The court found that in issuing the sanctions against the Plaintiffs, the IA acted pursuant to the union's constitution – a private agreement – and not pursuant to a "right or privilege created by the State." In addition, the court found that despite the fact that the IA was a quasi-governmental actor, the plaintiffs were unable to establish that the IA " . . . may fairly be said to be a state actor." That was because the state itself, while involved in the creation of the IA position, was not involved in the activity that caused the alleged injury – the issuance of sanctions. *Id. See also, Leahy v. Board of Trustees of Community College District No. 508*, 912 F.2d 917, 921 (7th Cir. 1990) (finding that internal union

decision not to pursue member's grievance did not implicate a constitutional violation without "facts which . . . would show that the Union, a private entity, was acting under color of state law. . . .").

Here, the Petitioners seek a finding that the Respondents' expulsion of them from Lodge 7 violates the First and Fourteenth Amendments. By the Petitioners' own admissions, it was Lodge 7 which instituted union disciplinary charges against the Petitioners. It was likewise Lodge 7 which undertook proceedings pursuant to its internal constitution and by-laws to expel the Petitioners from the union and ultimately achieved that result. Neither the City of Chicago, the State of Illinois, nor any other state actor was utilized in those proceedings or involved in achieving that result. And no federal law, state law or municipal ordinance governs the issue.

2. This Court's Prior Union Shop and Fair Share Cases Are Inapposite to this Case

Nevertheless, the Petitioners plead with this Court to find state action despite the clear court precedent to the contrary. First, they claim that state action exists through the IPLRA's "union shop" provision. Petitioners attempt to analogize *Abood v. Detroit Board of Education*, 431 U.S. 209 (1976), and *Railway Employes' Department v. Hanson*, 351 U.S. 225 (1956), to the instant matter, contending that the existence of a fair share arrangement between a union and public employer – or the State of Illinois'

legislation in the area of the payment of fair share fees – somehow imbues the union with state authority. Had the Petitioners filed this suit to challenge the state's requirement that they financially contribute to Lodge 7 they would be correct in this assertion; conversely, their reliance on those cases is misplaced here because the underlying conduct that Petitioners are protesting is their expulsion from the union, not a collection of fees for the union. It is without question that state law was not relied upon in expelling the Petitioners from Lodge 7. Rather, the sole basis for the expulsion and the process by which Petitioners were expelled was Lodge 7's private constitution and by-laws. It is further evident that the act for which they seek a remedy is their expulsion from Lodge 7, not the deduction of fair share fees. In fact, the crux of Petitioners' claim is that, as a result of their expulsion from Lodge 7, they were improperly denied the right to pay more money to that entity. In fact, even if the state were to repeal the IPLRA provision regarding fair share fees, the Petitioners would not become members of Lodge 7, because the state has absolutely no control over – and has not attempted to exert control over – the matter of whom unions accept as members.

It is for this reason that the cases principally relied upon by the Plaintiffs – *Abood v. Detroit Board of Education* and *Railway Employes' Dept. v. Hanson* – are inapposite. In each of those cases, state action was present because the underlying conduct being challenged resulted from specific contractual provisions

between the employer and union, respectively the taking of dues (*Abood*) and the implementation of a union shop (*Hanson*). Such findings are consistent with cases such as *Driscoll v. International Union of Operating Engineers, Local 139*, 484 F.2d 682 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974), where the Court of Appeals reiterated that to be subject to constitutional scrutiny the very activity of a private entity which a plaintiff challenges must be supported by state action. *Id.* at 690. There is simply no reasoning in *Abood* or *Hanson* that permits the sweeping generalization that all unions which have fair share fee arrangements with public employers become state actors for all purposes, including the expulsion of members.

The Petitioners' expulsion from Lodge 7 was undertaken pursuant to the Respondents' constitution and by-laws, which are wholly independent of state law. The position that the Petitioners take is that because a state action might be present with respect to the process designed for deducting fair share fees, then every other action of the Respondents is, therefore, also state action. That cannot be the case. Such a determination would undermine the distinction between public and private actors that was intended for constitutional claims and would be contrary to established law. Under the Petitioners' theory, unions which represent public sector employees would become state actors in every action that they undertake, not only those which are undertaken with the imprimatur of state or federal law, but

all actions taken outside the scope of collective bargaining.

The Petitioners further contend that state action exists in this case because state law grants Lodge 7 the exclusive authority to engage in collective bargaining with the City over its police officers' terms and conditions of employment. They assert that because Lodge 7 is the exclusive bargaining representative of municipal employees pursuant to state collective bargaining law (i.e., the IPLRA), the union is operating under a state-conferred "monopoly." Therefore, the Petitioners reason, the conduct of Lodge 7 is subject to constitutional scrutiny. The IPLRA, however, does not govern internal union matters such as leadership elections or discipline of members. Further, there is no monopoly with respect to public sector employees' selection of a collective bargaining representative. As noted by the Petitioners, the IPLRA allows a labor organization to become the exclusive bargaining representative of an appropriate unit of employees by majority vote (either by secret ballot or a card check process). What they fail to mention is that there is also a procedure through which employees can decertify a labor organization and through which these employees can change their bargaining representative if they are dissatisfied with the representation provided by the Respondents. 5 ILCS 315/9(a). As a result of such a process, a union cannot maintain a monopoly as the representative of Chicago's police officers. Moreover, pursuant to that statute, Lodge 7 has a continuing

duty to fairly represent the Petitioners in the negotiation of their terms and conditions of employment, whether or not they remain members of the union. 5 ILCS 315/10(b)(1). Thus, any assertion on the part of the Petitioners that their employment would be compromised by their expulsion from Lodge 7 is meritless.

The IPLRA also specifically excludes internal union matters from its jurisdiction. While it does provide for unfair labor practices on the part of labor organizations, it clearly exempts labor organizations' rules and actions regarding acquisition and retention of membership. 5 ILCS 315/10(b)(1). The State has chosen not to regulate unions' internal decision making with respect to membership, be it the basis for expelling a member or the means used for expulsion. Thus, the State's "action" with respect to internal union affairs can best be described as inaction – a legislative decision not to intervene in such matters. The State of Illinois' unwillingness to legislate the public sector unions in the same manner as that of the LMRDA over private sector unions does not support a finding of state action in this case. *See American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 53-4 (1999).

A state's mere grant of exclusive representative status to a union is likewise insufficient to make every act of Lodge 7 subject to constitutional scrutiny. A similar argument was raised in *Leahy v. Board of Trustees* when the plaintiff posited that state action was present because City Colleges delegated its

authority over conditions of employment to the employees' union through the collective bargaining process. *Leahy*, 912 F.2d at 920. The Court of Appeals rejected that argument in *Leahy,* and this Court should continue to reject such arguments here.

Moreover, cases outside of the labor context have similarly rejected the Petitioners' "monopoly" theory. The basis for rejecting such arguments was best articulated in *San Francisco Arts and Athletics Inc. v. United States Olympic Committee*, 483 U.S. 522 (1987). That case involved an arts organization's attempt to use the word "Olympic" in a program of an athletic nature bearing the title Golden Gate Olympic Association. The United States Olympic Committee (USOC) had, by Congressional action, obtained the exclusive right to use the word "Olympic." 483 U.S. at 526. The arts organization claimed that the USOC enforced its right to use the name "Olympic" in a discriminatory manner, and the issue presented was whether the USOC is a governmental actor to which the prohibitions of the Constitution apply. *Id.* at 527. The Court, citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974), held:

> The fact that Congress granted it a corporate charter does not render the USOC a Government Agent. All corporations act under charters granted by a government, usually by a State. They do not thereby lose their essentially private character. Even extensive regulation by government does not transform

> the actions of their regulated entity into those of the government.

483 U.S. at 543-4. Nor was the fact that Congress had granted the USOC exclusive use of the word "Olympic" sufficient to create state action. *Id.* at 544.

It has also long been the position of this Court that the existence of state regulation on a matter, even the existence of state regulation that is "extensive and detailed," will not convert a private entity's action pursuant to the state regulation to state action. *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982) (*quoting Jackson v. Metropolitan Edison Co.*, 419 U.S. at 350). In *Rendell-Baker*, the plaintiff, a counselor at a private school, alleged that the school had violated her rights under the First, Fifth and Fourteenth Amendments when it discharged her. 419 U.S. at 834-5. Many of the school's functions were extensively regulated by state law. *Id.* at 832-3. The Court, relying on the precedent established in *Blum v. Yaretsky* and *Jackson v. Metropolitan Edison Co.*, rejected the plaintiff's claim that the extensive regulation of the school's actions by the state converted the otherwise private school into a state actor for the purposes of discharging the plaintiff. *Id.* at 841-2. Specifically, the Court concluded that the decision by the school to discharge the plaintiff was not "compelled or even influenced" by any state regulation and that, while there was extensive regulation of the school generally, the various regulators did not involve themselves in any significant way in the school's personnel matters. *Id.* The regulation was

therefore insufficient to make the decision to discharge the plaintiff, made by private management, state action. *Id.* at 842.

The instant case is analogous to that in *Rendell-Baker*. Here, admittedly, there is state regulation concerning public sector collective bargaining. It might even be considered by some to be extensive and detailed. Yet, there is a complete absence of state regulation of the internal union affairs of public sector unions. The decision of Lodge 7 to expel the Plaintiffs – indeed, the decision of Lodge 7 to expel any member – is not governed by any regulation other than the Respondents' internal constitution and by-laws, which are neither influenced nor compelled by the State, the City of Chicago, or any other governmental entity. Like in *Rendell-Baker*, there is here no state regulation that governs the expulsion of union members, let alone a state regulation that compels or influences expulsion decisions. The same is true with respect to *San Francisco Arts and Athletics Inc.* The fact that Lodge 7 has an exclusive representative status for purposes of collective bargaining negotiations does not make it a state actor, in the same manner that the USOC's exclusive status and grant of a monopolistic right to use the Olympic symbols did not make it a state actor. Based upon this precedent, one cannot conclude that Lodge 7's alleged "monopoly" over collective bargaining with the City of Chicago makes it a state actor when it decides to expel a member.

B. The Petitioners Cannot Assert Constitutional Rights Simply on the Basis that No Federal or State Law Provides an Adequate Remedy

The Petitioners appear to argue that they must be allowed to proceed with their constitutional claims because Illinois does not have a "state" equivalent to the LMRDA, and the LMRDA does not cover them. The premise being that if they cannot proceed under the First and Fourteenth Amendments, then there is no relief for them at all. But such matters do not eliminate the need for state action in constitutional claims and are not appropriately remedied in this fashion. As enunciated by this Court, "The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide." *California v. Sierra Club*, 451 U.S. 287 (1981). The wisdom, fairness, and policy of statutes are the business of the legislature, not the courts. *Reeder v. Kansas City Bd. of Police Com'rs*, 796 F.2d 1050, 1055 (8th Cir. 1986), *cert. denied*, 479 U.S. 1065 (1987); *see also*, *Harper v. U.S. Seafoods LP*, 278 F.3d 971, 976 (9th Cir. 2002), *cert. denied*, 537 U.S. 879 (2002) (courts are not free to rewrite laws simply because a result seems unfair in a particular case).

The Petitioners suggest that this Court institute, under the guise of First or Fourteenth Amendment interpretation, a state law equivalent to the LMRDA where none actually exists in fact. Respectfully, to do

so would usurp the proper role of the Illinois legislature. When drafting the IPLRA, it expressly excluded from the state's regulation the internal affairs of unions. Likewise, when drafting the LMRDA, Congress excluded public sector unions from its coverage. The fact that these legislatures chose not to regulate the internal affairs of the Respondents and like labor organizations does not compel this Court to create a legal remedy for Petitioners through the Constitution, as the Petitioners claim. Rather, their inaction is an express limit on the Petitioners' right to challenge their expulsion from the union in the courts and should be recognized as such in this case.

CONCLUSION

This case is not what the Petitioners' arguments imply. It is not a challenge to Illinois' law concerning the certification or recognition of collective bargaining units; it is not a challenge to state legislation regulating the collection of union dues or the creation of a "union shop." It is, instead, a claim by the Petitioners that the Respondent unions violated their Constitutional rights by expelling them from membership in the union. As the Respondents did not act under color of state law when doing so, the Petitioners' claims were properly dismissed by the trial

court. The Respondents thus respectfully request that this Court deny the Petitioners' petition for *certiorari*.

Respectfully submitted,

JOEL A. D'ALBA
Counsel of Record
MARGARET A. ANGELUCCI
MICHELE COTRUPE
ASHER, GITTLER, GREENFIELD
& D'ALBA, LTD.
200 W. Jackson Blvd.,
Suite 1900
Chicago, Illinois 60606
Telephone: (312) 263-1500

Attorneys for Respondents

October 29, 2009